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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Eric G. Suder

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EXAMINER

NGUYEN, HANH N

ART UNIT

PAPER NUMBER

2616

NOTIFICATION DATE

DELIVERY MODE

09/11/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/072,343	<b>Applicant(s)</b> SUDER ET AL.	
	<b>Examiner</b> Hanh Nguyen	<b>Art Unit</b> 2616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Response filed on 6/19/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35-46 is/are allowed.
- 6) ☒ Claim(s) 1, 4-12, 14-34 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed on 6/19/08 have been fully considered but they are not persuasive.

In the Remark, pages 11, 12, Applicant argues the combination of Murphy and Sen does not disclose coupling a network device to a modem through a telephone device, does not disclose a circuitry for throttling data sent from the network device.

First, in the communication system 12 ( fig.1) of Murphy, any gateway 20, gateway 32 or VOIP phone 14C can provide packet throttling ( see col.3, lines 10-16). Examiner considers the VOIP phone 14C to provide packet throttling. Further, the endpoint 14D can be a computer ( network device' see col.2, lines 50-55). The voice gateway 32, by encoding and formatting audio signals into VOIP packets for routing to IP network 30 ( see col.2, lines 60-65) is well-known in the art to be a gateway router which includes a modem . Therefore, in Murphy, fig.1, the computer device endpoint 14D is coupled to a modem which is voice gateway 32C ( network device is coupled to a modem).

However, there is not a telephone device coupled between the endpoint 14D and the voice gateway 32 to achieve the claimed limitation the network device coupled to the modem through a telephone device.

Sen et al. discloses in fig.2, a computer 116 coupled to a telephone 114 ( see fig.2). In col.6, lines 45-60, the invention of Sen et al. provides both voice and data communication such as when there is not voice communications from

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telephone 114, data from computer 116 may consume all available bandwidth; and when voice communication from telephone 114 requires, the data transmitted from computer 116 must be queued or held up in delay element 105 so that voice communication may be serviced.

Sen et al. has shown that the computer device 116 is coupled to telephone 114 and the field of invention is similar to that of Murphy as well as the claimed invention of Applicant which is throttling data communication from a computer device in order to save/prioritize bandwidth for voice communication from a telephone device is needed ( see Specification on pages 3, 4 and 8).

Therefore, it would have been obvious to one skilled in the art to implement the delay element 105 of Sen et al. into VOIP telephone 14C of Murphy as a circuit for throttling data sent from the network device/endpoint 14D, and couple the voip telephone 14c between the endpoint 14D and voice gateway 32. The advantages of the combination is to reduce the data transmission from the network device when there is a need to transmit voice from the telephone. No delay in voice transmission occurs in VOIP network while still maintaining the data transmission at a lower rate.

On page 13 of the remark, applicant further argues the combination Murphy and Sen does not disclose transferring data from network device to the the telephone. With the combination of Murphy and Send addressed above, the endpoint 14D transsmit data to VOIP telephone 14C which further routes data across IP network 30 ( see Murphy in col.2, lines 50-65).

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On Page 14, Applicant argues the cited references do not disclose an input data port for receiving data on the telephone device. Examiner believes that one skilled in the art should understand in Murphy, the VOIP 14C telephone is coupled to IP network 30 should have an input port such as microphone or output port such as speaker.

On page 15, Applicant argues the the throttling circuitry in Murphy is located within the network, and is not located within the telephone device. Again, refer to Murphy in fig.2, col.3, lines 10-16 & col.4, lines 58-65, either gateway 20, gateway 32, or VOIP phone 14C provides packet throttling circuit such as packet throttling 36.

On page 16, Applicant argues neither Murphy nor Sen disclose a monitoring circuitry comprising a buffer. Murphy, on fig.2, col.3, lines 3 packet throttle 36 monitoring available space in buffer 24). Further on page 16, claim 11, Applicant argues Murphy does not disclose a mode level in which the first throttling circuit should operate. Examiner notes that the claim language does not specifically indicate what the mode level means. Therefore, examiner understands the “ mode level” as a level in which the throttling circuit varying the number of samples of audio streams 18 ( see col.3, lines 30-35).

On page 17, applicant further argues that no realtime multimedia signal is communicated between the network device and the telephone in the cited reference. Sen et al. discloses data from network device is sufficiently throttled so that the first telephone device can communicate realtime multimedia signals to and from modem and ( col.5, lines 30-35; data is managed by throttling

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/processing at a lesser data rate so that sufficient bandwidth is provided to service voice communication in realtime manner ( see col.5, lines 5-10).

On page 18, Applicants argues the cited references does not disclose the jitter buffer temporarily stores the information. It is noted in Murphy ( buffer 24, see fig.2, col.3, lines 62-67; packets 45 is stored in current free queue 52 of buffer 24 and output via IP interface 50 to IP network 30).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-12, 14-27, 30-34, are rejected under 35 USC 103(a) as being unpatentable over Murphy ( US pat. 6,856,613 B1) in view of Sen et al. (US Pat. 6,330,451 B1).

In claims 1, 4-6, 8, 16-18, 22, 26, 27, 30, 33 Murphy discloses in fig.1, col.2, line 50 to col.3, line 35; an information system (a communication network 12) comprising IP network 30 ( claims 4, 5 17, 18; TCP/IP; packet switch network); a first telephone coupled to a first network device (claim 6, 26, 27; VOIP telephone 14C is coupled to computer 14D). The VOIP phone 14C provides audio packet throttling as well as packet throttling performed by packet throttle 36 shown in

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gateway 32, 20 ( col.3, lines 10-15; a circuitry in VOIP phone 14C performing audio packet throttling).

Murphy does not disclose the telephone device includes a circuitry for throttling data sent from the first network device and the telephone coupled to a modem.

Sen et al. discloses an information handling system (a wireless communication system shown in fig.2) comprising: a first telephone device ( telephone 114) coupled to a first network device ( coupled to PC 116). Sen et al discloses in fig.2, col.6, line 32 to col.7, line 10; that when data transmission between subscriber 130 and computer 116 share available bandwidth of voice transmission between subscriber 124 and telephone 114, a delay element 105 cause the computer 116 to send data at a lower rate to increase available bandwidth for voice communication (a circuitry throttling data sent from the first network device).

In VOIP network , having a modem coupled tyo the IP telephone is well-known ion the art. Applicant is directed to see claims 28 below using Fuller et al. that teaches the use of modem coupled to IP telephone. Therefore, it would have been obvious to one ordinary skilled in the art to apply the teachings of Sen et al. into Murphy by implementing the delay element 105 ( see Sen et al., fig.2) into the voip phone 14C of Murphy in order to reduce data rate transmission from Internet computer 17 rather than reduce audio packet. The motivation is to enhance the QOS during transmission of voice and data in VOIP network. The users in VOIP network do not suffer spoken sound by increasing the rate of voice transmission.

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In claim 7, 19, 23, 24, Murphy discloses the throttling circuitry reduces a future amount of data from being transferred from the network device if the amount of data exceeds a predetermined threshold (col.3; lines 37-42; packet throttle 36 monitors available space in buffer 24 to see if the available space in the buffer is too low and fig.2, col.5, lines 30-35; buffer monitor 48 monitors the current free queue 48 to determine when a throttle condition exists).

In claims 20 and 21, Murphy discloses monitoring audio information comprising monitoring a predetermined level within a jitter buffer is addressed in claims 1, 7, 19, 23, 24.

In claim 14, in order to meet the missing the required limitations in Murphy, Sen et al. discloses data from network device is sufficiently throttled so that the first telephone device can communicate realtime multimedia signals to and from modem and ( col.5, lines 30-35; data is managed by throttling /processing at a lesser data rate so that sufficient bandwidth is provided to service voice communication in realtime manner ( se col.5, lines 5-10). Therefore, it would have been obvious to one ordinary skilled in the art to apply the teachings of Sen et al. into Murphy to throttle sufficient bandwidth in multimedia transmission so that voice is prioritized for realtime transmission.

IN claims 9, 10, Murphy discloses monitoring circuitry ( packet throttle 36; fig.1) comprising a jitter buffer ( buffer 24; fig.1; col.3, lines 37-45) where the predetermined threshold is a predetermined level within the jitter buffer (space in buffer 24 is too low).



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In claim 15, Murphy discloses telephone, first network device, router are coupled to each other via network (see fig.1; VOIP phone 14C, endpoint 14D, voice gateway 32 are coupled to IP network 30).

In claims 11, 12, Murphy discloses the throttling circuitry adjusts its level of throttling of audio in response to the mode level ( throttling the rate of VOIP packet 26 by varying number of samples of audio bit stream 18 ( see col.3, lines 30-35).

In claims 25, Murphy discloses the network device is a work station ( endpoint 14D; fig.1) and the telephone device is a digital telephone (endpoint 14B). see fig.1, col.2, lines 50-65.

In claims 31 and 34, Murphy discloses jitter buffer temporarily stores information ( buffer 24, see fig.2, col.3, lines 62-67; packets 45 is stored in current free queue 52 of buffer 24 and output via IP interface 50 to IP network 30).

In claim 32, Murphy discloses IP telephone with level 2 switching circuitry (switching path 51, col.5, lines 20-27).

Claims 28, 29 are rejected under 35 USC 103(a) as being unpatentable over Murphy ( US pat. 6,856,613 B1) in view of Sen et al. (US Pat. 6,330,451 B1), and further in view of Fuller et al. ( US Pat. 7,203,186 B1).

In claims 28, 29, as disclosed in the rejection of claim 1, the combination of Murphy and Sen et al. discloses voice and data communication to a WAN ( IP network ), but does not disclose a modem communicates the data to the WAN.

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Fuller ety al. discloses in fig.1, modem 22 coupled to IP phone 18 via a hub (router) and Internet computer 17 to communicate data to Internet 14. Therefore, it would have been obvious to transmit multimedia data comprising voice, data in Murphy with data being throttled for increasing the rate of voice communication to enhance qos in VOUIP network.

### ***Allowable Subject Matter***

Claims 2, 3, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 35-46 are allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Lynn Feild , can be reached on 571 272 2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hanh Nguyen/  
Primary Examiner, Art Unit 2616

<div>Application Number</div> <div></div>	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/072,343	SUDER ET AL.	
	Examiner	Art Unit	
	Hanh Nguyen	2616	